



July 12, 2000

Ms. Pamela Smith
Assistant General Counsel
Texas Department Of Public Safety
Box 4087
Austin, Texas 78773-0001

OR2000-2618

Dear Ms Smith.:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 136933.

The Texas Department of Public Safety (the "department") received a request for information relating to a traffic accident that involved a fatality. You inform us that the department has released the responsive peace officer's accident report. You claim that other responsive information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and have reviewed the information you submitted.¹ We also received and have reviewed the requestor's letter to this office dated May 25, 2000.

Initially we must address the department's failure to comply with section 552.301 of the Government Code in requesting this ruling. Section 552.301 provides, in relevant part, that a governmental body that seeks to withhold requested information from the public must provide to this office, not later than the fifteenth business day after its receipt of the written information request, "a copy of the written request for information[.]" Gov't Code § 552.301(e)(1)(B). Section 552.302 provides as follows:

¹This letter ruling assumes that the representative sample of responsive information that you submitted is truly representative of the requested information as a whole. This letter ruling neither addresses, nor authorizes the department to withhold, any responsive information that differs substantially from the submitted information. See Gov't Code § 552.301(e)(1)(D); Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

If a governmental body does not request an attorney general decision as provided by Section 552.301 and provide the requestor with the information required by Section 552.301(d), the information requested in writing is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information.

Gov't Code § 552.302. As the department failed in this instance to comply with section 552.301(e)(1)(B), the information requested in writing must be released unless there is a compelling reason to withhold that information from the public. As sections 552.103 and 552.108 are discretionary exceptions to required public disclosure that the governmental body may waive, the department's exceptions under those sections are not compelling reasons that overcome a failure to comply fully with section 552.301. *See also Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 380-81 (Tex. App.--Austin 1990, no writ); Open Records Decision Nos. 665 at 2 n.5 (2000) (addressing distinction between mandatory and discretionary exceptions to disclosure), 630 at 3 (1994) (addressing compelling reasons that are sufficient to overcome failure to comply with section 552.301 in requesting decision). However, the presence of confidential information that implicates third-party privacy interests generally does present a compelling reason under section 552.302. *See Gov't Code § 552.007(a)* (providing that Public Information Act does not prohibit voluntary release of information "unless the disclosure is expressly prohibited by law or the information is confidential under law"); Open Records Decision Nos. 630 at 3 (1994), 150 (1977).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. A social security number is excepted from disclosure under section 552.101 in conjunction with 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), *if it was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990*. *See Open Records Decision No. 622 at 2-4 (1994)*. It is not apparent to this office that any social security number contained in the submitted information is confidential under section 405(c)(2)(C)(viii)(I) of the federal law. You have cited no law, nor are we aware of any law, enacted on or after October 1, 1990, that authorizes the department to obtain or maintain a social security number. Therefore, we have no basis for concluding that any social security number in the submitted information was obtained or is maintained pursuant to such a statute and is therefore confidential under the federal law. We caution you, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Therefore, prior to releasing any social security number, the department should ensure that the number was not obtained and is not maintained pursuant to any provision of law enacted on or after October 1, 1990.

Section 552.101 also requires the withholding of information that is protected by the common law right of privacy. *See Industrial Found. v. Texas Ind. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information must be withheld from disclosure under section 552.101 in conjunction with common law privacy when (1) the

information in question is highly intimate and embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, *and* (2) there is no legitimate public interest in its disclosure. *See Industrial Found.*, 540 S.W.2d at 685; see also Open Records Decision No. 659 at 5 (1999). The matters considered to be intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* include sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimacy, psychiatric treatment, attempted suicide, and injuries to reproductive organs. *See* 540 S.W.2d at 683. Some personal financial information is protected by the common law right of privacy. *See* Open Records Decision No. 373 (1983). That determination is made on a case-by-case basis. *Id.* at 4. We have marked the personal financial information that the department must withhold under section 552.101 in conjunction with common law privacy.

The submitted records also contain motor vehicle record information whose disclosure is governed by section 552.130 of the Government Code. Section 552.130 provides in relevant part:

(a) Information is excepted from [required public disclosure] if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state;

(2) a motor vehicle title or registration issued by an agency of this state; or

(3) a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document.

Gov't Code § 552.130(a). We have labeled the motor vehicle record information that must be withheld from disclosure in accordance with section 552.130.

In summary, the department's failure to comply fully with section 552.301 results in a presumption that the requested information must be released, unless there is a compelling reason to withhold any of that information from the public. The department's assertions of sections 552.103 and 552.108 do not overcome the presumption of openness under section 552.302. Therefore, except for confidential information that the department must withhold under sections 552.101 and 552.130, as described above, the requested information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

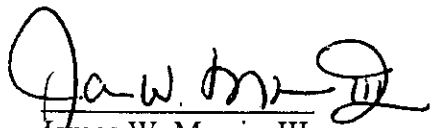
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "J.W. Morris, III". The signature is fluid and cursive, with a large initial "J" and a stylized "M".

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/ljp

Ref: ID# 136933

Encl. Submitted documents

cc: Mr. Gary Stephens
Stephens & Stephens
7407 Old Katy Road , 2nd Floor
Houston, Texas 77024
(w/o enclosures)